

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RALPH W. MCCLAIN, JR.,	:	CIVIL NO. 1:10-CV-00035
	:	
Plaintiff	:	(Judge Caldwell)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
DR. KALE, <i>et al.</i> ,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

The plaintiff, a prisoner proceeding *pro se*, commenced this 42 U.S.C. § 1983 action by filing a complaint on January 7, 2010.

The complaint names Dr. Kale as a defendant as well as the following officers and officials at the State Correctional Institution at Dallas: Lieutenant Bleich, Sergeant Musial, Captain Does 1-4, Nurse Doe 1, Corrections Officer Bath, Corrections Officer Wilkes, Corrections Officer Rathburn, Corrections Officer Corbett, Nurse Doe 2, Superintendent Klopotoski and Grievance Coordinator Lucas.

The Marshal has not served the complaint on defendants Captain Does 1-4, Nurse Doe 1 and Nurse Doe 2. But the Marshal cannot attempt to serve these defendants because the plaintiff has not sufficiently identified these defendants.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign county under Rule 4(f) or 4(j)(1).

Over a year passed since the filing of the complaint and the plaintiff had not identified defendants Captain Does 1-4, Nurse Doe 1 and Nurse Doe 2 such that service can be made on these defendants. So we ordered the plaintiff to show cause why these defendants should not be dismissed from the case pursuant to Fed.R.Civ.P. 4(m). We noted that if the plaintiff were to fail to show cause, we would recommend that defendants

Captain Does 1-4, Nurse Doe 1 and Nurse Doe 2 be dismissed from the case.

The plaintiff's response to the show cause order was due on or before May 31, 2011. He has not filed a response to the show cause order. Nor has he requested an extension of time to do so.

Because the plaintiff has not identified defendants Captain Does 1-4, Nurse Doe 1 and Nurse Doe 2 such that service can be made on those defendants, we recommend that those defendants be dismissed from the case pursuant to Fed.R.Civ.P. 4 (m). We also recommend that the case be remanded to the undersigned for further proceedings.

/s/ J. Andrew Smyser
J. Andrew Smyser
Magistrate Judge

Dated: July 15, 2011.